



DEWITT
ROSS & STEVENS^{LLC}
LAW FIRM

www.dewittross.com


Capitol Square Office
Two East Mifflin Street
Suite 600
Madison, WI 53703-2865
Tel 608-255-8891
Fax 608-252-9243

Metro Milwaukee Office
13935 Bishop's Drive
Suite 300
Brookfield, WI 53005-6605
Tel 262-754-2840
Fax 262-754-2845

Please respond to: Capitol Square Office
Direct line: 608-252-9358

MEMORANDUM

TO: Chairman Steinbrink and Members of the Assembly Transportation Committee

FROM: Jordan Lamb (252-9358) 

FOR: Envirotech Wisconsin Inc.

DATE: March 11, 2010

I. **Subject:** AB 719 would allow the DOT to eliminate the consumer fraud protection provision from the next RFP issued for Wisconsin's Motor Vehicle Inspection Program.

II. **Problem this Bill Aims to Address:** Citizens of Racine and Kenosha Counties have been inconvenienced by the DOT's closure of the auto emissions testing station in Burlington. **This bill would allow the DOT to award a contract for emissions testing to auto repair shops in the Burlington area and throughout the entire 7-county non-attainment area.** This is currently prohibited by the anti-fraud provision of 110.20(8) Wis. Stats.

III. **Flaw with AB 719:**

1) This bill would terminate the consumer anti-fraud protection provisions of Wis. Stats. § 110.20(8) that have been part of the Wisconsin emissions testing law for more than two decades.

"No officer, director or employee of the contractor may be an employee of...a person engaged in the business of selling, maintaining or repairing motor vehicles or of selling motor vehicle replace or repair parts."
(Wis. Stats. § 110.20(8))

This law has separated the emissions testing process from the auto repair process, thereby eliminating any incentive for the emission tester to sell

MEMORANDUM

March 11, 2010

Page 2

unnecessary goods or services to a citizen who only needs an emissions test. Under this bill, multiple auto repair shops would be available to conduct emissions tests in lieu of the closed Burlington station, which was operated by Envirotest.

2) The Burlington "solution" could result in the DOT imposing the same "solution" (multiple auto repair shops in lieu of the current centralized system) **throughout the 7-county emissions testing area.**

IV. **Envirotest's Alternative Solution(s):** Envirotest suggests that to address the Burlington area's need for emissions testing services that the Legislature direct DOT to re-open the Burlington facility. We believe that can be done without additional cost to the State.

If reopening the Burlington facility is impossible, then the elimination of the anti-fraud protection of 110.20(8) should be limited to the Burlington area. This would allow the DOT to "test" its theory that fraud can be dealt with on a limited "as needed" scale without exposing the **entire** emissions testing program to the risks inherent in abandoning the current consumer fraud protection under s. 110.20(8) Wis. Stats.

V. **The Current Emissions Testing Program is "Fraud Free" and Gets Very High Marks from Wisconsin Consumers.**

A: **Customer Wait (for Emissions Testing Service) Will Not Increase.** The average "wait time" at all Envirotest facilities is extremely short. In the most recent four months, the average Wisconsin citizen in need of an emissions test has **waited just 4.8 minutes** to get tested.

In contrast, citizens forced to go to Kenosha and Racine County auto repair facilities under AB 719 are going to experience very uneven wait time results. (Auto repair shops are typically busy serving auto repair customers.) The time it takes for an emissions test consumer to go into the repair shop and get in the shop's service line is inevitably going to be considerably longer than 4.8 minutes. Some auto repair shops will be inclined to work on their most profitable projects first and do low- or no-profit emissions testing last, resulting in some very long emissions testing wait times.

Burlington citizens will get a second class program under this bill.

MEMORANDUM

March 11, 2010

Page 3

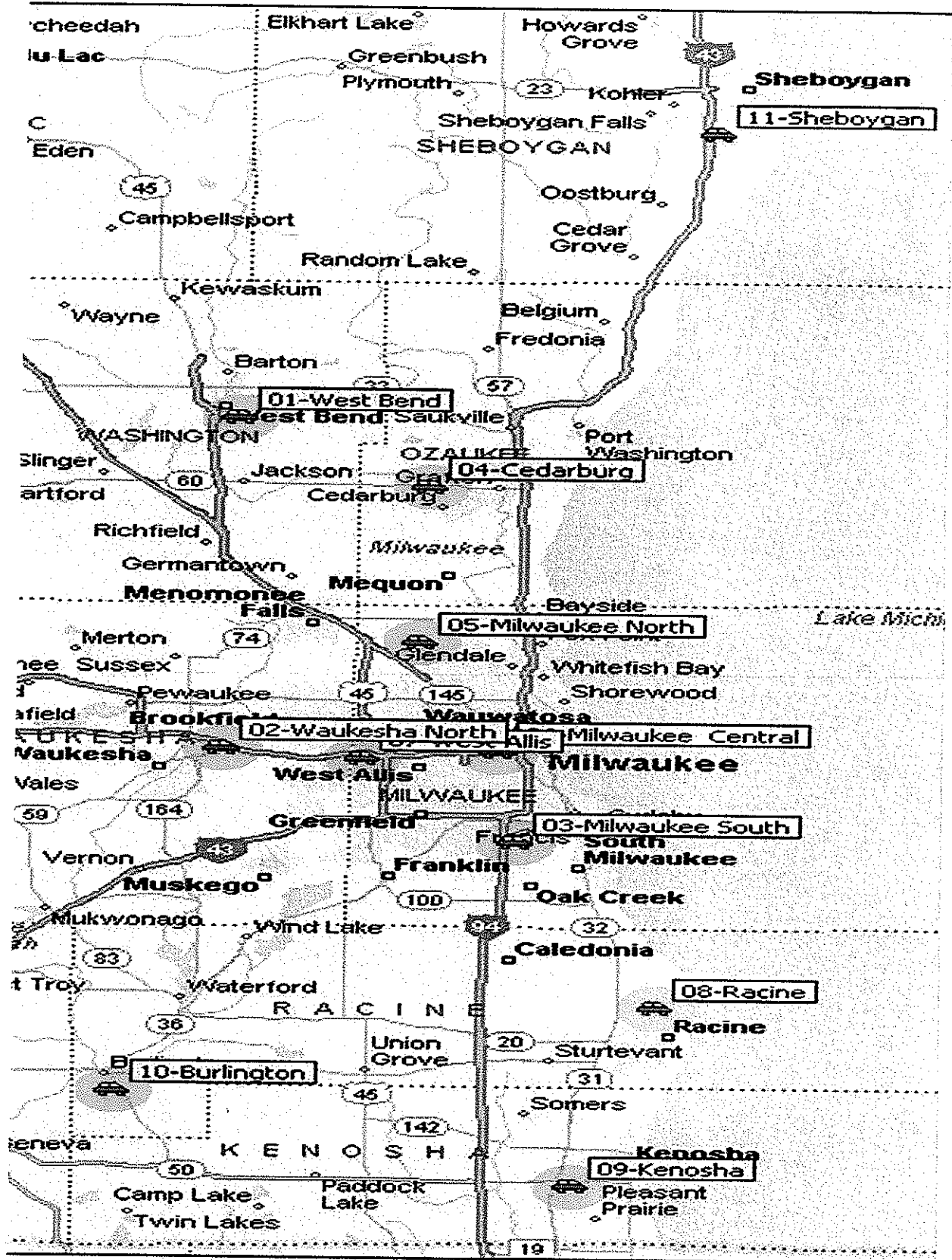
B: Customer Satisfaction—Guaranteed. The DOT has been measuring Wisconsin citizen/customer satisfaction at the Envirotest emission testing sites for more than 20 years. As a result of the DOT's and Envirotest's response to customer satisfaction critiques, **over 99% of Wisconsin citizens using Envirotest services in 2009 rated those services either "good" or "excellent" overall.** The categories of customer services and some statistics in each category are as follows:

Overall Service: 0 persons surveyed rated overall service "poor." 3,233 rated overall service as "excellent" and **99.738% gave a "good or excellent" rating.**

Station Appearance: 3 persons surveyed rated this "poor" and 2,673 rated it excellent, with **98.853% rating this "good or excellent."**

Inspector Attitude: 2 persons surveyed rated this "poor" and 3,363 gave Envirotest an excellent rating and **99.713% rated this factor "good or excellent."**

If the DOT were to transfer testing to a variety of auto repair shops throughout the 7-county region, then these customer satisfaction ratings will inevitably fall dramatically.





State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4256/1
ARG:jld:jf

2009 ASSEMBLY BILL 719

February 9, 2010 - Introduced by Representatives STEINBRINK, GOTTLIEB, HONADEL, PASCH and SINICKI, cosponsored by Senators WIRCH and TAYLOR. Referred to Committee on Transportation.

1 AN ACT *to amend* 110.20 (5) (a) and (b), 110.20 (8) (am) 1., 110.20 (8) (bm), 110.20
2 (9) (e) and 110.20 (12); and *to create* 110.20 (8) (am) 7. and 8., 110.20 (8) (c) and
3 110.20 (9) (L), (m) and (n) of the statutes; **relating to:** motor vehicle emission
4 inspections and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Current law requires the Department of Transportation (DOT) to conduct a motor vehicle emission inspection and maintenance program (I/M program) in counties in which the air quality does not meet certain federal standards. Under the I/M program, most motor vehicles that are subject to emission limitations established by the Department of Natural Resources (DNR) must pass periodic emission inspections and may not be registered by DOT unless they have passed these inspections. DOT may contract with third parties to perform vehicle emission inspections under the I/M program. Current law prohibits DOT from contracting with a person engaged in the business of selling, maintaining, or repairing motor vehicles or of selling motor vehicle replacement or repair parts (vehicle dealer or servicer). Current law also provides that, if a vehicle fails to pass an emission inspection, any repair or adjustment necessary to bring the vehicle into compliance with applicable emission limitations may be made by the vehicle owner or by any person selected by the owner.

This bill allows DOT to contract with any person to perform vehicle emission inspections under the I/M program, including a vehicle dealer or servicer. The bill also specifies that DOT may allow third-party contractors to enter into subcontracts

ASSEMBLY BILL 719

for the performance of the contractor's functions or duties, but the subcontractor must comply with all requirements applicable to the contractor. With DOT's approval, the third-party contractor may also subcontract with a vehicle dealer or servicer. The bill also allows vehicle emission inspections to be performed by DOT or by persons who are authorized by DOT to perform the inspections but who are not under contract with DOT. If an emission inspection is performed by a vehicle dealer or servicer, and the vehicle fails the inspection, the vehicle dealer or servicer must advise the vehicle owner that the owner is not required to have any necessary repair or adjustment made by, or to purchase any necessary service or part from, the vehicle dealer or servicer and has the right to select a vendor of the owner's own choice. DOT rules must require each vehicle dealer or servicer that performs emission inspections to periodically report to DOT information related to vehicle repairs and reinspections after a failed inspection. DOT must make information gathered from these reports available to the public.

The bill allows DOT, with the concurrence of DNR, to grant temporary vehicle emission inspection exemptions during any period in which DOT is unable to operate the I/M program. The bill requires DOT to prescribe procedures for granting temporary vehicle emission inspection exemptions and for authorizing persons other than contractors to perform motor vehicle emission inspections.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 110.20 (5) (a) and (b) of the statutes are amended to read:

2 110.20 (5) (a) Any county identified in a certification under s. 285.30 (3). The
3 department shall terminate the program in the county ~~at the end of the contractual~~
4 ~~period in effect~~ when the county is withdrawn under s. 285.30 (4). If the program is
5 being operated under contract, termination shall occur at the end of the contractual
6 period in effect.

7 (b) Any county whose board of supervisors has adopted a resolution requesting
8 the department to establish an inspection and maintenance program in the county
9 for the purpose of improving ambient air quality beyond the standards mandated by
10 section 7409 of the federal act. The department shall terminate the program in the
11 county ~~at the end of the contractual period in effect~~ when the county board adopts

The New York Times

Vehicle Tests on Emissions Were Faked

By MIREYA NAVARRO

Published: February 18, 2010

Dozens of auto repair shops and service stations in New York City, Long Island and Westchester County faked the results of emissions tests, giving nearly 21,000 cars and light trucks passing grades, state environmental officials said Thursday.

Officials with the State Department of Environmental Conservation said they had issued citations to 40 of about 3,500 inspection sites in the region for granting inspection certificates for vehicles that were not tested.

To pass the annual state emissions inspection, a car or truck is connected to a machine that checks the vehicle's computerized emissions control system and sends the information to the State Department of Motor Vehicles. But the repair shops and service stations that were cited attached the inspection equipment to an electronic device that simulated the test.

"New York State does this program because we want clean air and because we need to comply with the federal Clean Air Act," said Steven E. Flint, a director with the Environmental Conservation Department's air resources division. "When people start cheating the system," Mr. Flint said, "it deprives air quality of that benefit."

The emissions testing is part of a program instituted in 2005 that seeks to keep tailpipe gases and other pollution within regulated standards by checking that a vehicle's emissions monitoring computer system is in good working order. State officials said this was the first time they had encountered electronic devices simulating the inspections since the program, for vehicles manufactured in 1996

or later, started. Earlier testing monitored emissions directly from the tailpipe.

Although the emissions testing costs \$37, repairs to vehicles that fail the test can cost much more.

Investigators for the Department of Motor Vehicles flagged 20,773 cases of fraudulent inspections from March 2008 to September 2009 at 27 sites in the Bronx, 4 in Manhattan, 4 in Suffolk County, 3 in Nassau County and 1 each in Westchester County and Brooklyn. The stations face potential fines of \$375 to \$15,000 for the first offense and up to \$22,500 for each ensuing offense.



AG: Shop put 47 illegal stickers on cars

By Paul Tennant

ptennant@eagletribune.com

January 28, 2010 01:55 am

HAVERHILL, MA — A local auto repair shop owner conducted at least 47 fraudulent emissions tests on vehicles, said state Attorney General Martha Coakley.

Rafael Duluc, owner of Winter Street Auto, 174 Winter St., performed the tests beginning in February 2008, according to a complaint filed by Coakley in Suffolk Superior Court yesterday. While the fee for a Massachusetts auto inspection is \$29, Duluc charged an additional \$20, the complaint states.

Duluc, of 15 6th Ave., said he had no comment on the allegations. During a visit yesterday afternoon by an Eagle-Tribune reporter, Duluc was doing an inspection on a pickup truck. A sign posted outside the side bay where he was performing the inspection promised that \$2 of every inspection fee would be donated to relief efforts for the victims of the earthquake in Haiti.

Jill Butterworth, deputy press secretary for Coakley, said the action filed against Duluc is civil, not criminal, so he will not be arraigned before the court. Similar complaints have been filed against other businesses across the state, she said.

The complaint alleges that Duluc would enter into his computer the information from the vehicle whose owner was applying for a sticker, but would actually test another vehicle, which would pass. This practice is called "clean scanning," according to the attorney general's office.

The complaint seeks civil penalties against Duluc under the Clean Air and Consumer Protection acts, which provide for penalties up to \$25,000 and \$5,000, respectively, for each illegal inspection. The complaint also asks the court to bar Duluc from conducting any further emissions inspections.

Last April, the attorney general's office and Dorchester Auto Service reached a settlement, whereby that station, charged with conducting 72 fraudulent inspections, paid the state \$144,000. The employee who conducted the bogus inspections had his inspector's license permanently revoked.

Asked if the attorney general's office built its case against Duluc by using undercover investigators, Butterworth said she could not comment on the specifics of the probe.

Ed Coletta, spokesman for the state Department of Environmental Protection, which joined the attorney general's office in the investigation, said computer analysis played a very significant role in the case.

"We have technical experts who look for anomalies," Coletta said.

If, for example, Duluc used the same vehicle when conducting his tests, the state's computer would eventually reveal the frequency of similar emissions readings, Coletta said.

When an emissions inspector does a test, he uses equipment that is connected to the state bureaucracy. Furthermore, Coletta said, the car that is actually being tested likely has enough "imbedded information" to alert investigators that it's not the same vehicle as the one that is supposedly being tested.

The emissions tests are important, Coletta said, because state and federal environmental regulators are trying to achieve reductions in air pollution.

"They're still polluting if we don't catch them," he said of cars that get stickers without the legally required emissions test.

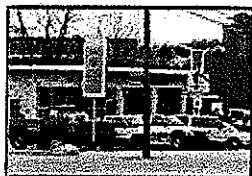
Coletta and Butterworth said the majority of emissions tests in Massachusetts follow the law. As for those who issue stickers without performing the required tests, "they cause problems for everyone," Coletta said.

Coakley filed a complaint against Hillside Jaguar of Somerville in October 2008, alleging that business conducted 208 fraudulent inspections.

Samuel Bicalho, 22, operator of a Framingham auto repair shop, pleaded not guilty in June to charges that he repeatedly issued stickers to vehicles that would not pass inspection.

Copyright © 1999-2010 cnhi, inc.

Photos



Winter Street Auto, 174 Winter St., is accused of violating state automobile inspection standards and now faces thousands of dollars in fines. Staff Photographer

OCCUPATIONAL HEALTH AND SAFETY MAGAZINE

10 Vehicle Emissions Testers Indicted for 'Clean Scanning' Scam

Jan 13, 2010

According to the Department of Justice, when it comes to vehicle emissions testing, what happens in Vegas definitely does not stay in Vegas. On Jan. 8, a federal grand jury in Las Vegas returned indictments against 10 Nevada-certified emissions testers for falsifying vehicle emissions test reports; DOJ announced.

Each defendant faces one felony Clean Air Act count for falsifying reports between November 2007 and May 2009. The number of falsifications varied by defendant, with some defendants having falsified approximately 250 records, while others falsified more than double that number, DOJ said. One defendant is alleged to have falsified more than 700 reports.

The 10 defendants are alleged to have engaged in a practice known as "clean scanning" vehicles. The scheme involved entering the Vehicle Identification Number (VIN) for a vehicle that would not pass the emissions test into the computerized system, then connecting a different vehicle the testers knew would pass the test. These falsifications were allegedly performed for anywhere from \$10 to \$100 over and above the usual emissions testing fee.

The U.S. Environmental Protection Agency (EPA), under the Clean Air Act, requires the state of Nevada to conduct vehicle emissions testing in certain areas because the areas exceed national standards for carbon monoxide and ozone. Las Vegas is currently required to perform emissions testing.

To obtain a registration renewal, vehicle owners bring the vehicles to a licensed inspection station for testing. The emissions inspector logs into a computer to activate the system by using a unique password issued to the emissions inspector. The emissions inspector manually inputs the vehicle's VIN to identify the tested vehicle, then connects the vehicle for model year 1996 and later to an onboard diagnostics port connected to an analyzer. The analyzer downloads data from the vehicle's computer, analyzes the data, and provides a "pass" or "fail" result. The pass or fail result and vehicle identification data are reported on the Vehicle Inspection Report. It is a crime to knowingly alter or conceal any record or other document required to be maintained by the Clean Air Act.

"Lying about car emissions means dirtier air, which is especially of concern in areas like Las Vegas that are already experiencing air quality problems," said Cynthia Giles, assistant administrator for Enforcement and Compliance Assurance at EPA. "We will take aggressive action to ensure communities have clean air."

"The residents of Nevada deserve to know that the vast majority of licensed vehicle emission inspectors are not corrupt and are not circumventing emission testing procedures," said U.S. Attorney Daniel Bogden. "These indictments should serve as a clear warning to offenders that the Department of Justice will prosecute you if you make fraudulent statements and reports concerning compliance with the federal Clean Air Act."

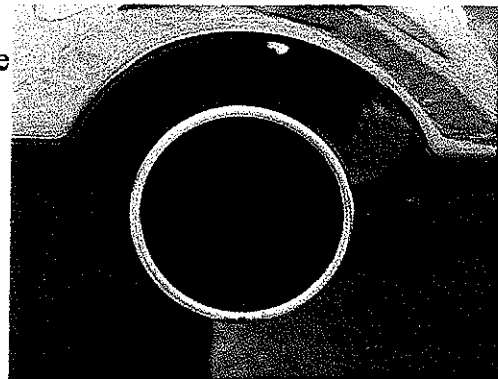
The maximum penalty for the felony violations contained in the indictments includes up to two years in prison and a fine of up to \$250,000. DOJ noted that an indictment is merely an accusation, and a defendant is presumed innocent unless and until proven guilty in a court of law.

The case was investigated by the EPA, Criminal Investigation Division; and the Nevada Department of Motor Vehicles Compliance Enforcement Division. The case is being prosecuted by the U.S. Attorney's Office for the District of Nevada and DOJ's Environmental Crimes Section.

Sin City's illegal activities include falsifying vehicle emissions tests

by Sebastian Blanco (RSS feed) on Jan 10th 2010 at 6:26PM

How's this for a peek into the Las Vegas underworld? The U.S. Department of Justice indicted ten men in Vegas Friday for falsifying vehicle emissions tests. Some men allegedly falsified about 250 vehicles, but one did over 700. Because the air in some parts of Nevada, including Las Vegas, has levels of carbon monoxide and ozone that are higher than the U.S. Environmental Protection Agency's standards, the state is required to test vehicles and make sure they're not adding too much to the problem. It should be a simple process: bring your car to a check station, the inspector runs some tests and finds out if your ride passed or failed the check. If your mechanic is shady, though, there are ways around the system.



Here's how the scheme is supposed to have worked: The emissions inspector manually types a vehicle's VIN into the computer before testing the vehicle. Because the computer doesn't know which vehicle is then actually connected, the inspector can hook up a vehicle that is certain to pass after entering the VIN of a dirty car. Even though the result of these cheats means dirtier air for everyone, the inspectors named in the indictment were paid, in some cases, just \$10 (up to \$100 in other cases) for their dishonesty.

Even though the men named in the indictment now face up to two years in prison and a fine of up to \$250,000 if they're found guilty, the numbers seem to say that there are easily thousands of people in Las Vegas who would gladly pay a few extra bucks to drive around in a dirty car. Thanks, jerks.

[Source: U.S. Department of Justice | Image: Rishabh Mishra (possible248) - C.C. License 2.0]

PRESS RELEASE

10 Las Vegas Men Indicted for Falsifying Vehicle Emissions Tests

Nevada DMV Computerized Database Led to Discovery of Falsifications

WASHINGTON, Jan. 8 /PRNewswire-USNewswire/ -- A federal grand jury in Las Vegas today returned indictments against 10 Nevada-certified emissions testers for falsifying vehicle emissions test reports, the Justice Department announced.

Each defendant faces one felony Clean Air Act count for falsifying reports between November

2007 and May 2009. The number of falsifications varied by defendant, with some defendants having falsified approximately 250 records, while others falsified more than double that figure. One defendant is alleged to have falsified over 700 reports.

The individuals indicted include:

- Eduardo Franco, 30
- Alexander Wayne Worster, 27
- William Joseph McCown, 48
- Joseph DeMatteo, 52
- David Eugene Nelson, 46
- Louis Engene Demeo, 50
- Adolpho Silva-Contreras, 47
- Peter Escudero, 47
- Wadji Waked, 24
- Gary Smith, 47

Escudero resides in Pahrump, Nev. All other individuals are from Clark County, Nev.

The 10 defendants are alleged to have engaged in a practice known as "clean scanning" vehicles. The scheme involved entering the Vehicle Identification Number (VIN) for a vehicle that would not pass the emissions test into the computerized system, then connecting a different vehicle the testers knew would pass the test. These falsifications were allegedly performed for anywhere from \$10 to \$100 over and above the usual emissions testing fee.

The U.S. Environmental Protection Agency (EPA), under the Clean Air Act, requires the state of Nevada to conduct vehicle emissions testing in certain areas because the areas exceed national standards for carbon monoxide and ozone. Las Vegas is currently required to perform emissions testing.

To obtain a registration renewal, vehicle owners bring the vehicles to a licensed inspection station for testing. The emissions inspector logs into a computer to activate the system by using a unique password issued to the emissions inspector. The emissions inspector manually inputs the vehicle's VIN to identify the tested vehicle, then connects the vehicle for model year 1996 and later to an onboard diagnostics port connected to an analyzer. The analyzer downloads data from the vehicle's computer, analyzes the data and provides a "pass" or "fail" result. The pass or fail result and vehicle identification data are reported on the Vehicle Inspection Report. It is a crime to knowingly alter or conceal any record or other document required to be maintained by the Clean Air Act.

"Falsifications of vehicle emissions testing, such as those alleged in the indictments unsealed today, are serious matters and we intend to use all of our enforcement tools to stop this harmful practice. These actions undermine a system that is designed to reduce air pollutants including smog and provide better air quality for the citizens of Nevada," said Ignacia S. Moreno, Assistant Attorney General for the Justice Department's Environment and Natural Resources Division.

"The residents of Nevada deserve to know that the vast majority of licensed vehicle emission inspectors are not corrupt and are not circumventing emission testing procedures," said U.S. Attorney Bogden. "These indictments should serve as a clear warning to offenders that the Department of Justice will prosecute you if you make fraudulent statements and reports concerning compliance with the federal Clean Air Act."

"Lying about car emissions means dirtier air, which is especially of concern in areas like Las Vegas that are already experiencing air quality problems," said Cynthia Giles, Assistant Administrator for Enforcement and Compliance Assurance at EPA. "We will take aggressive action to ensure communities have clean air."

The maximum penalty for the felony violations contained in the indictments includes up to two years in prison and a fine of up to \$250,000.

An indictment is merely an accusation, and a defendant is presumed innocent unless and until proven guilty in a court of law.

The case was investigated by the EPA, Criminal Investigation Division; and the Nevada Department of Motor Vehicles Compliance Enforcement Division. The case is being prosecuted by the U.S. Attorney's Office for the District of Nevada and the Justice Department's Environmental Crimes Section.

MassDEP Environmental Strike Force Investigation Results in Penalties, Suspension of Licenses at Six Auto Emission Inspection Stations

Fraudulent Inspections Uncovered at Everett, Framingham,
Lawrence, Methuen, Salem and Worcester Locations

BOSTON - The Massachusetts Department of Environmental Protection (MassDEP) has penalized six auto inspection stations after an Environmental Strike Force (ESF) investigation found each had conducted fraudulent vehicle emission inspections in 2008 and early 2009.

Each of the six inspections stations will pay a penalty ranging from \$6,000 to \$30,000. Each has also signed a "Last Chance Agreement" with the Registry of Motor Vehicles (RMV) and agreed to a license suspension for a period ranging from 30 to 120 days. In each case, any additional violation during a one- or two-year license suspension period could result in a complete revocation of its license.

"The public relies on our Massachusetts Vehicle Check auto emission inspection program to help reduce pollutants in the air we breathe," MassDEP Commissioner Laure Burt said. "Each resident of the Commonwealth is cheated out of cleaner air when emissions testing fraud occurs. It is also unfair to the vast majority of well-run auto inspection stations, which do the right thing by detecting and repairing vehicles that fail to meet the state's emission standards."

The inspection stations are located in Everett, Framingham, Lawrence, Methuen, Salem and Worcester. The investigation found that stickers were obtained and placed on cars that could not pass the emissions test by substituting another vehicle that could pass the test.

Each of these stations must demonstrate full compliance with the regulations in order to determine if that station will have some of its suspension and financial penalty reduced. If that occurs, the stations may resume conducting inspections, but could face revocation of its license under the Last Chance Agreement.

All of these facilities were licensed by the Massachusetts RMV to conduct yearly safety and emission inspections that cars and truck are required to undergo in the Commonwealth, and for which each motorist pays \$29. The following stations were penalized:

Hi-Tech Auto Services, Inc. at 416 Ferry Street in Everett has had its auto inspection license suspended for 120 days, with the remainder of its two-year suspension contingent on future compliance. The facility has also been penalized \$30,000 for conducting eight fraudulent inspections from January 1, 2008 to April 8, 2008 and will pay \$3,000. The remaining \$27,000 will be stayed based on continued compliance.

Framingham Petroleum & Auto Center at 174 Union Street in Framingham has had its auto inspection license suspended for 30 days, with the remainder of a one-year suspension stayed contingent on future compliance. The facility has also been penalized \$6,000 for conducting 25 fraudulent inspections from January 1, 2008 to July 30, 2008 and for various hazardous waste management violations and will pay \$3,000. The remaining \$3,000 will be stayed based on continued compliance.



• Route 114 Gulf, Inc. at 325 Winthrop Avenue in Lawrence has had its auto inspection license suspended for 30 days, with the remainder of its two-year suspension contingent on future compliance. The facility has also been penalized \$30,000 for conducting 15 fraudulent inspections from January 1, 2008 to July 30, 2008 and will pay \$12,200. The remaining \$17,800 will be stayed based on continued compliance.

• Lowell Street Getty at 30 Lowell Street in Methuen has had its auto inspection license suspended for 30 days, with the remainder of its two-year suspension contingent on future compliance. The facility owner has also been penalized \$32,000 for conducted 16 fraudulent inspections from April 8, 2008 to September 20, 2008 and will pay \$16,000. The remaining \$16,000 will be stayed based on continued compliance.

• Spiros Energy & Auto Repair at 119 Boston Street in Salem has had its auto inspection license suspended for 30 days, with the remainder of its two-year suspension contingent on future compliance. The facility has been penalized \$24,000 for conducting 12 fraudulent inspections from November 1, 2008 through February 25, 2009 and for various hazardous waste management violations, and will pay \$6,000 with the remaining \$18,000 dependent on continued compliance.

• Power Test (Sfair Enterprises) at 390 Belmont Street in Worcester has had its auto inspection license suspended for 30 days, with the remainder of its two-year suspension contingent on future compliance. The facility owner has also been penalized \$20,000 for conducting 28 fraudulent inspections from January 1, 2008 to September 16, 2008 and will pay the entire amount.

This latest round of penalties and suspensions is the latest in an ongoing initiative involving cracking down on fraudulent auto inspection sites. Recently, in October 2008, the Massachusetts Attorney General's Office and MassDEP announced civil and administrative enforcement cases against seven motor vehicle inspection stations and 12 inspectors for allegedly conducting hundreds of fraudulent inspections in violation of the state's Enhanced Emissions and Safety Test Program.

In February 2009, a motor vehicle inspection station in Lawrence agreed to pay \$12,000 in fines and serve a 30-day suspension of its license for conducting a dozen fraudulent emissions tests during 2008, giving motorists passing inspection stickers when their vehicles should have failed.

The Environmental Strike Force (ESF) an interagency unit that includes investigators and attorneys from MassDEP and the Attorney General's Office. The ESF investigates and prosecutes violations that threaten the environment and that pose a threat to human health.

• MassDEP is responsible for ensuring clean air and water, safe management and recycling of solid and hazardous wastes, timely cleanup of hazardous waste sites and spills, and the preservation of wetlands and coastal resources.

THE DISPATCH

Date: Friday, October 23, 2009
 Location: GILROY, CA
 Circulation (DMA): 4,451 (5)
 Type (Frequency): Newspaper (2WK)
 Page: A9
 Keyword: California Smog Check

Smog check technician implicated in 'clean piping' scam

Man certified cars
that did not pass
inspection

MICHAEL MOORE • STAFF WRITER
 mmooore@svnewspapers.com

MORGAN HILL

A technician at a Morgan Hill smog check shop fraudulently inspected and certified vehicles that would not have passed emissions tests on their own, according to state and local authorities.

David Nguyen, 56, a San Jose resident, worked at TNT Smog at 16860 Joleen Way when the California Department of Consumer Affairs' Bureau of Automotive Repair and the Santa Clara County District Attorney's office jointly conducted an undercover investigation into area smog check shops.

Technicians working at seven shops in Santa Clara County were arrested for using a process known as "clean piping" to falsely certify customers' vehicles that would not have been in compliance with state emissions regulations, according to the DCA. In most of the cases, a technician used a clean exhaust sample from another vehicle that would pass a smog check, while entering data for the vehicle for which the smog check was requested by its owner, DCA spokesman Luis Farias said.

The shops charged as much as \$200 per vehicle to conduct smog checks. At some of the locations, vehicles were "tested" and "certified" without even being present, Farias said.

Investigations of each shop began at different times throughout the spring, according to Farias, and were prompted by "suspicious data" submitted by the shops to state regulators.

Arrest warrants were served on 12 smog check technicians after the results of the undercover operations were turned over to the D.A.'s office.

In August, Nguyen was convicted of four felony counts of false certification of a document by recording a false instrument. D.A.'s spokesperson Amy Cornell said.

He was sentenced to 60 days in Santa Clara County Jail, three years formal probation, 75 hours community service, and a fine of \$10,000 to be paid to the DCA in retribution for costs associated with the investigation. He is also no longer allowed to conduct smog tests in California.

Other defendants targeted by the DCA pleaded to similar felony charges, and received similar sentences. Two of the scammers cooperated with prosecutors, and have an opportunity to reduce their charges to misdemeanors after a proba-

tionary period, Cornell said.

"This is an environmental rip-off, where shady operators have given a green light to cars that pump smog and other pollutants into the atmosphere," California Attorney General Jerry Brown said. "Their licenses to do business should be permanently invalidated to send a message that this type of scam won't be tolerated."

The BAR will pursue administrative action against those who were convicted, seeking to permanently revoke their auto repair dealer registrations and their smog check station licenses, Farias said.

TNT Smog is still open and conducting smog tests. An employee who answered the phone Wednesday afternoon said Nguyen no longer works at the shop.

Investigations of each shop began independently in the spring of 2009.

Other shops whose owners or technicians were implicated in "clean piping" scams are Tram Test Only Center Inc.; Spartan Test Only; 914 Test Only; 210 Smog Test Only; Century Auto Service, all in San Jose; and Santa Clara Test Only, in Santa Clara.

Anyone who notices suspicious activity involving smog check stations may call the DCA at (800) 952-5210. Information for motorists seeking to legitimately pass smog tests is available at drivehealthy.com.



FRAMINGHAM

State slaps suspension on auto shop

By Dan McDonald
DAILY NEWS STAFF

FRAMINGHAM — After a state investigation uncovered fake emissions inspections, Framingham Petroleum & Auto Center will have its auto inspection license suspended for 30 days and will pay at least \$3,000 in fines.

The business, at 174 Union Ave., conducted 25 fraudulent inspections from Jan. 1, 2008, to July 30, 2008. The inspection station placed stickers on cars that would not pass the emissions test by substituting another vehicle that could pass the test.

If there is another violation, the auto center could serve an 11-month suspension and pay \$3,000 more in fines or have its license revoked.

The state Department of Environmental Protection also busted inspection stations in Everett, Lawrence, Methuen, Salem and Worcester. The penalties for those violations were made public yesterday.

"The public relies on our Massachusetts Vehicle Check auto emission inspection program to help reduce pollutants in the air we breathe," said state Department of Environmental Protection Commissioner Laurie Burt in a statement.

"Each resident of the commonwealth is cheated out of cleaner air when emissions testing fraud occurs. It is also unfair to the vast majority of well-run auto inspection stations, which do the right thing by detecting and repairing vehicles that fail to meet the state's emission standards."

(Dan McDonald can be reached at 508-626-4416 or e-mail him at dmcDonald@cnc.com).





**Missouri Department of
Natural Resources**

News Release 160

Motorists warned about fraudulent vehicle emissions testing -- vehicle retesting is required

Volume 37-160

Contact: Renee Bungart

(For immediate release)

573-751-4465

JEFFERSON CITY, MO, JUNE 8, 2009 -- In its efforts to protect air quality and maintain the integrity of the Gateway Vehicle Inspection Program, the Missouri Department of Natural Resources notified more than 90 motorists in the St. Louis area who are required to retest their vehicles for emissions.

Motor vehicles are a leading source of air pollution in the St. Louis area due to the large number of vehicles on the road and amount of miles traveled daily. The Gateway Vehicle Inspection Program tests all 1996 and newer gas-powered vehicles and 1997 and newer diesel-powered vehicles weighing 8,500 pounds or less that are registered in the St. Louis nonattainment area. A nonattainment area is an area that does not meet the federal health-based air quality standards for ground-level ozone, a strong lung irritant. The nonattainment area includes St. Louis City, Franklin, Jefferson, St. Louis and St. Charles counties.

The Missouri State Highway Patrol and Department of Natural Resources completed an investigation that built cases against three licensed emissions inspectors who unlawfully performed vehicle emissions testing. More than 90 vehicles were fraudulently tested through a process called clean scanning.

The emissions inspectors entered the correct vehicle information into the computer, but connected the scanning equipment to another vehicle that they knew would pass. The actual Vehicle Identification Number or VIN number from the scanned vehicle downloads to the Vehicle Inspection Database alerting the Department of Natural Resources of the fraudulent inspections. Owners of some of the vehicles identified confirmed that they had paid inflated charges of \$100 to \$125 to fraudulently obtain the passing emissions tests.

The Department notified motorists who received unlawful emissions tests and need to have their vehicles retested. Motorists with questions about their test can contact the Missouri Department of Natural Resources' Inspection and Maintenance Section at 314-416-2115 or 800-361-4827 or by e-mail at imunit@dnr.mo.gov.

One of the offenders, Mark Banskter, was sentenced to 10 months in prison on charges of violating the Clean Air Act by falsifying auto emission tests. Banskter is a licensed emissions inspector and the owner of American Automotive Sales and Service, located at 1457 Vandeventer, St. Louis. In May 2008, the Department of Natural Resources and the Missouri State Highway Patrol reviewed the Vehicle Inspection Database and identified 32 vehicles fraudulently tested or clean scanned by Mark Banskter from October 2007 through May 2008.

Two other offenders, Michael Terry and James Dubose are charged with violations of the Clean Air Act for falsifying auto emission tests. According to the indictment, Michael Terry and James Dubose are licensed emissions inspectors employed by Sure Start Batteries and Tires, located at 6767 St. Charles Rock Road, Pagedale. The indictment alleges that in May 2008, the Department of Natural Resources and the Missouri State Highway Patrol reviewed the Vehicle Inspection Database and identified 31 vehicles fraudulently tested or clean scanned by Michael Terry from March through May 2008, and 23 vehicles fraudulently tested or clean scanned by James Dubose from February through May 2008.

The Gateway Vehicle Inspection Program is jointly administered by the Department of Natural Resources and the Missouri State Highway Patrol. The program is a key component of the ongoing effort to improve air quality in the St. Louis region.

###

MARTHA COAKLEY
ATTORNEY GENERAL

Contact:
Jill Butterworth (AGO)
(617) 727-2543
Ed Coletta (MassDEP)
(617) 292-5737
Ann Dufresne (RMV)
(617) 973-7014

April 27, 2009 - For immediate release:

Attorney General Martha Coakley Reaches Settlement with Dorchester Auto Inspection Station and Auto Inspector

BOSTON — Today, Attorney General Martha Coakley's Office reached a settlement agreement with a Dorchester motor vehicle inspection station and an inspector who was employed by the station. The settlement resolves allegations that both defendants were responsible for conducting at least 72 illegal emission inspections in violation of the state's Enhanced Emissions and Safety Test program. Under the terms of the settlement, filed today in Suffolk Superior Court, Dorchester Auto Service, Inc. ("Dorchester Auto"), will pay a total penalty of \$144,000, and will be subject to a six-month suspension of its inspection station license. George C. Nelson, of Cambridge, the inspector employed at the station who allegedly conducted the fraudulent inspections, will have his inspector license revoked as part of the settlement agreement. Attorney General Coakley brought the action on behalf of the Massachusetts Department of Environmental Protection ("MassDEP") and the Registry of Motor Vehicles ("RMV").

"Today's settlement makes clear that an inspection station is responsible for ensuring that its inspectors do their job and inspect motor vehicles in compliance with the Massachusetts Enhanced Emissions and Safety Test Program," said Attorney General Coakley. "The program, designed to identify high polluting vehicles with emission control systems that are not operating properly, is an important part of the state's effort to reduce emissions of harmful air pollutants from cars and to protect the quality of the air that we breathe."

"The inspection and maintenance program is vital to our efforts to improve air quality in Massachusetts, combat global warming and reduce greenhouse gas emissions. Fraudulent inspections are an affront to the vast majority of inspectors who comply with the rules every day and to the citizens of the Commonwealth who care about the air we breathe and planet we share," said MassDEP Commissioner Laurie Burt. "We will continue to work with the Attorney General's office and the RMV to weed out any inspectors and inspection stations where self-interest is put before the interests of public health and the environment."

"The RMV relies upon the integrity of the inspectors and stations that we license to perform inspections in conformance with the law," said Registrar Rachel Kaprielian. "We will revoke or suspend the license of any participant in the vehicle check program who violates the rules to help protect the safety and well-being of all Massachusetts drivers."

The complaint against Dorchester Auto and Nelson, filed on October 23, 2008, alleges that since December 2006, the defendants have conducted at least 72 fraudulent emissions inspections. The fraudulent inspections involved an on-board diagnostic (OBD) emissions test. The OBD test is a simple test in which an inspector plugs the scan tool from an inspection workstation into a vehicle's OBD connector, and the workstation's computer queries the vehicle's

computer for the status of the emissions control system monitors. The complaint alleges that for each of the fraudulent emissions inspections, the defendants did not conduct an OBD test on the motor vehicle that was subject to the test as required, but instead, tested a "clean" vehicle, one that they knew would pass the test, and then used the results from that test to issue a passing inspection sticker to the vehicle that came in for the inspection. This illegal practice is known as "clean scanning."

According to the complaint, a practice developed at Dorchester Auto where a motorist who wanted to avoid expensive repairs for a vehicle that had already failed an OBD test, or that had an illuminated check engine light, would be able to obtain a passing inspection sticker by asking for "Joe the Fish." Nelson allegedly would then conduct a fraudulent emissions inspection and issue a passing Inspection Certificate for the vehicle even though it was not in fact inspected. According to the complaint, Nelson admitted to MassDEP and the RMV during a site visit that he was "Joe the Fish."

The complaint alleged that the clean-scanned inspections not only violated the emissions inspection regulations and the Massachusetts Clean Air Act, but also the Massachusetts Regulation of Business Practices and Consumer Protection Act. By issuing passing inspection stickers to motor vehicles that were not inspected, Nelson and Dorchester Auto falsely represented to the public, including potential purchasers of the motor vehicles at issue, that the vehicles were inspected and that they passed the emissions tests and would not be in need of any repairs on their emission control equipment. The complaint filed in October asserted the fraudulent inspections created an unfair competitive advantage for the defendants over the other inspection stations and inspectors that have been complying with the law in conducting emissions inspections.

Under the terms of the settlement, Dorchester Auto and Nelson agreed to the entry of a Final Judgment that orders Dorchester Auto to pay \$72,000 of the \$144,000 penalty, with the remainder suspended. Dorchester Auto is also barred from doing any motor vehicle inspections for 6 months. Further, if Dorchester Auto conducts any clean scans during the three years after the entry of the Final Judgment, it will be required to pay the suspended penalties and its inspection license will be suspended for the remainder of the three year period. Under the Final Judgment, the RMV will revoke Nelson's inspector license, and he is barred from doing any inspections in the future.

The lawsuit against Dorchester Auto and Nelson was one of several enforcement cases the state initiated in October 2008 to target this clean scanning practice among motor vehicle inspection stations and inspectors. The other cases involve stations in Framingham, Lawrence, Everett, and Somerville. They are still being prosecuted by the Attorney General's Office or are currently under settlement negotiations with MassDEP.

On October 1, 2008, MassDEP and the RMV rolled out the "next generation" Vehicle Emission Test and Safety Inspection Program. The new program enables MassDEP and the RMV to better detect any fraudulent emissions inspections and to take the appropriate enforcement action.

Assistant Attorney General Siu Tip Lam of Attorney General Coakley's Environmental Protection Division handled the case with the assistance of William Mackay, Dean Bates, Christine Murphy, and Nancy Ward of the Civil Investigation Division. Attorney Jennifer Davis handled the case on behalf of the MassDEP with assistance from Stephen Spencer of MassDEP's Environmental Strike Force, Craig Woleader and John Flemmi of MassDEP's Enhanced Emissions

and Safety Test Program. Attorney Robert M. Horacek of the Executive Office of Transportation and Vehicle Safety and Compliance Coordinator Todd Gurney handled the case on behalf of the Registry of Motor Vehicles.

#####

St. Louis Business Journal

Tuesday, March 31, 2009

St. Louis emissions inspector gets jail time

St. Louis Business Journal

A St. Louis emissions inspector was sentenced to 10 months in prison Tuesday for falsifying auto emission tests, U.S. Attorney Catherine Hanaway said.

Mark Banskter, 46, owner and operator of American Automotive Sales and Service, located at 1457 Vandeventer, pleaded guilty in December to one violation of the Clean Air Act.

The Missouri State Highway Patrol reviewed its Vehicle Inspection Database and identified 32 vehicles fraudulently tested clean by Banskter from October 2007 through May 2008.

Banskter entered the correct identifying vehicle information in the computer but instead connected the SysTech equipment to a vehicle he knew would pass, prosecutors said.

Some vehicle owners said they paid inflated charges of \$100 to \$125 to Banskter to obtain the passing emissions tests.



The Eagle-Tribune

online



Repair station fined \$12,000 for phony emissions tests

By J.J. Huggins

jhuggins@eagletribune.com

February 16, 2009 12:22 am

LAWRENCE — Leo & Sons Auto Repair & Towing has been fined \$12,000 and barred from conducting vehicle emissions tests for a month by the state.

The station, at 157 S. Broadway, wound up in hot water because it conducted 12 fraudulent emissions tests last year, giving motorists passing inspection stickers when their vehicles should have failed, the Department of Environmental Protection said in a press release.

The station and owner Leo LaMontagne agreed to the sanctions after the DEP and Registry of Motor Vehicles uncovered vehicle data from computerized emissions tests. The tests, which did not match vehicle registration information in a state database, were performed by three of the company's inspectors, the release said.

"When an inspection station puts a passing sticker on a car that doesn't meet emission standards, it might seem like a harmless favor to a customer in a bind, but it isn't fair to the majority of motorists who keep their cars running clean and safe," MassDEP Commissioner Laurie Burt said in a statement. "It isn't good for the air we breathe either, and it won't be tolerated."

LaMontagne did not return calls seeking comment Friday.

Inspectors at Leo & Sons connected their emissions testing equipment to the on-board computer of a vehicle other than the one brought in for inspection. The swap ensured that the owner of the vehicle that was supposed to be tested would receive a passing sticker, the DEP said.

Under the consent order it entered into with MassDEP, Leo & Sons will pay \$12,000 of the \$24,000 penalty originally assessed, with the remainder suspended upon full compliance with the law and no further violations.

Leo & Sons signed a "Last Chance Agreement" with the RMV stipulating a license suspension of 30 days. That suspension will be extended for two years if new violations are discovered.

The 30-day suspension started Jan. 21, said DEP spokesman Ed Coletta.

Leo & Sons was one of seven inspection stations targeted in October for enforcement action for illegally performing what is known as "clean scanning." The other cases involve inspection stations in Dorchester, Somerville, Lawrence, Framingham, and Everett. Those other cases are still being prosecuted by the Attorney General's office or are currently under settlement negotiations with MassDEP.

The other Lawrence station involved is Route 114 Gulf, which allegedly conducted 15 fraudulent inspections, DEP said.

The Dallas Morning News

Inspector arrested in vehicle sticker case

Another Dallas County vehicle inspection station has been accused of issuing illegal inspection stickers.

12:00 AM CDT on Friday, June 13, 2008

By Kevin Krause

Deputy constables working for the county's Clean Air Emissions Task Force arrested an inspector Thursday morning while serving warrants at the Jefferson state inspection station at 3200 E. Jefferson St. in Grand Prairie, according to County Judge Jim Foster's office.

A second inspector was expected to turn himself in, county officials said.

The arrest caps a four-month investigation of the two inspectors, who were issuing between 350 and 500 illegal inspection stickers per week, earning an estimated \$25,000 weekly, officials said. The vehicles that received the illegal stickers either couldn't pass inspection or weren't present for the inspection, county officials said.

Eddie Garcia was charged with tampering with government records, a second-degree felony punishable by up to 20 years in prison.

The name of the second inspector wasn't released because he hadn't been charged as of late Thursday afternoon.

The district attorney's office plans to look into whether the charges should be upgraded to organized crime charges, according to Mr. Foster's office. Mr. Foster spearheaded the formation of the task force earlier this year.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: Senate Bill 509 (Second Edition)

SHORT TITLE: Motor Vehicle Inspection Changes.

SPONSOR(S): Senator Brown

FISCAL IMPACT

	Yes (x)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
REVENUES:	\$94,050	\$94,050	\$94,050	\$94,050	\$94,050
EXPENDITURES:	\$275,000	-	-	-	-
POSITIONS (cumulative):	-	-	-	-	-

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles

EFFECTIVE DATE: The time extension for a vehicle re-inspection is effective January 1, 2009. The increase in fines associated with civil penalties is effective when the bill becomes law.

BILL SUMMARY: Amends G.S. 20-183.3(c) to extend the timeframe from 30 to 60 days that an individual has to have a vehicle re-inspected after the vehicle has failed the initial inspection. This act amends G.S. 20-183.8A to exempt active duty military personnel from civil penalties assessed from emissions violations. The act changes the penalties and increases fines for type 1 emissions violations and creates a civil penalty for clean scanning violations.

ASSUMPTIONS AND METHODOLOGY:

- This act increases the fine for civil penalties to the inspection stations, self-inspectors and mechanics. Based upon 2006 penalties/fines assessed, the proposed increase of fines will result in estimated additional revenues of \$90,050. There is no estimate available for amount of revenues to be generated for the clean scanning violation.

- This act will require modifications to the existing hearing/penalty package on the computer system for recording and tracking; Division of Motor Vehicles (DMV) estimates the modifications to cost \$275,000 during the first year of implementation of this act. There are no additional ongoing costs for these changes.
- The Division of Motor Vehicles' current policy is to exempt military personnel when proof of deployment is presented to DMV. The civil penalties are cleared for that period of time that the service member is deployed. This language exemption is current business practice and there is no additional cost to DMV.
- Each inspection station would need to have their software for inspections upgraded to reflect the change increasing the period of time for re-inspection from 30 to 60 days. The upgrade would be completed by the vendors servicing that equipment and paid for by the stations; while there is no cost to the state, the stations would be required to pay for these modifications and that cost is not known at this time.

SOURCES OF DATA: Department of Transportation, Division of Motor Vehicles

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lisa Hollowell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 18, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices